

43098

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

GREAT LAKES INSURANCE SE	*	CIVIL ACTION NO.: <u>6:20-cv-00211</u>
	*	
Plaintiff,	*	SECTION:
	*	
v.	*	JUDGE:
	*	
TB & JB, LLC	*	MAGISTRATE JUDGE:
	*	
Defendant.	*	
	*	

COMPLAINT FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes Great Lakes Insurance SE (“Great Lakes”), who hereby files this Complaint for Declaratory Judgment, pursuant to 28 U.S.C. §§ 2201-02, the Federal Declaratory Judgment Act, and Rule 57 of the Federal Rules of Civil Procedure, seeking a Declaratory Judgment establishing that a Policy of insurance, Policy no. GLRE 11073 issued by Great Lakes to TB & JB, LLC, provides no coverage for a reported property damage event, occurring at 271 Grandwood Drive, Patterson, LA on or about November 8, 2019, which is further described below, and the ensuing insurance claim made by TB & JB, LLC seeking insurance coverage for said loss event. In support of this Complaint for Declaratory Judgment, Great Lakes represents as follows:

PARTIES

1.

Plaintiff, Great Lakes Insurance SE, is a German corporation with its principal place of business in Munich, Germany.

2.

Defendant, TB & JB, LLC, is a Limited Liability Company registered in the State of Louisiana, with its registered domicile address and mailing address at 411 Teche Road, Morgan City, Louisiana 70380. The members of TB & JB, LLC are Joseph M. Billiot and Tammy R. Billiot, both of whom are residents and citizens of the State of Louisiana.

JURISDICTION AND VENUE

3.

The Court has subject matter jurisdiction over the action under 28 U.S.C. § 1332(a) because complete diversity exists between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4.

The Court has personal jurisdiction over Defendant because Defendant, and its individual members, are residents and citizens of the State of Louisiana.

5.

Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant, and its individual members, reside within this judicial district and the property that is the subject of the action is situated within this judicial district at 271 Grandwood Drive, Patterson, LA 70392.

6.

This action is brought pursuant to 28 U.S.C. § 2201 and seeks declaratory relief as to Great Lakes' obligations to Defendant, TB & JB, LLC, under a policy of insurance issued to Defendant. Great Lakes files this Declaratory Judgment action to resolve questions of coverage under the

insurance policy. An actual and justiciable dispute over those duties, rights, and obligations exists between the Parties.

BACKGROUND FACTS

A. THE CLAIM

7.

Defendant, TB & JB, LLC, owns apartment buildings located at 271 Grandwood Drive, Patterson, LA 70392 (the “Property”).

8.

On or about November 8, 2019, two apartment units at the Property sustained damage as a result of a water damage incident caused by a burst water heater, which leaked water into the unit where the water heater was situated and the unit below (the “Incident”).

9.

Defendant, TB & JB, LLC, made an insurance claim with Great Lakes seeking insurance coverage for alleged property damage incurred as a result of the Incident.

10.

Great Lakes retained an independent adjuster, who conducted an initial inspection of the subject Property on November 11, 2019. The adjuster confirmed that the cause of the reported damage was the burst/rupture of plumbing equipment associated with a water heater in one of the apartment units.

11.

Following Great Lakes’ investigation of the claim, and coverage provided by the subject Policy of insurance, Great Lakes denied the claim on the basis that the Causes of Loss – Basic Form applicable to the subject Property under the Policy does not provide coverage for the cause

of loss at issue (a water damage incident resulting from a burst water heater). A denial letter was issued to TB & JB, LLC on January 29, 2020 which discussed the coverage purchased and provided by the Policy and explained the basis for the claim denial.

B. THE POLICY

12.

Great Lakes issued a Policy of Commercial Property insurance to TB & JB, LLC, Policy no. GLRE 11073, with effective dates of November 23, 2018 to November 23, 2019 (the “Policy”). (See Certified Policy, attached as Exhibit “A” hereto).

13.

The Policy was originally issued, as of the November 23, 2018 inception date, to provide “Building” coverage for ten (10) separate properties, along with “Contents” coverage for two (2) of those properties, with all coverage provided subject to all terms, provisions, conditions, limitations, and exclusions of the Policy.

14.

The subject Property located at 271 Grandwood Drive, Patterson, LA 70392 was not included in the Policy at the November 23, 2018 inception date. It is believed that this property was purchased by TB & JB, LLC at some time after the November 23, 2018 inception date of the Policy.

15.

The Commercial Insurance Application for the subject Policy, submitted by Terrebonne Insurance Agency, Inc. (“Terrebonne”), the agent for TB & JB, LLC, requested “Basic” Form coverage for all properties insured as of the Policy inception date (premises 1-10 shown in the Policy Declarations).

16.

In response to the Application submitted, prior to issuance of the Policy, the “Coverholder” on the Policy, Central Louisiana Insurance Consultants, Inc. (“CLIC”), put together an “Insurance Proposal” which was submitted to Terrebonne on or about October 25, 2018. This “Insurance Proposal” quoted “Basic” Form coverage for each of the premises 1-10, and also included a “Schedule of Forms” which showed the “Causes of Loss – Basic Form” in the Schedule as applicable to the proposed Policy.

17.

On or about November 16, 2018, Terrebonne sent email correspondence to CLIC requesting to bind coverage as per the terms stated in the “Insurance Proposal” to become effective November 23, 2018. The Policy was then issued in response to this request.

18.

On or about January 7, 2019, CLIC sent a complete copy of the Policy to Terrebonne along with an invoice for payment of the Policy premium.

19.

The copy of the Policy transmitted to Terrebonne on January 7, 2019 mistakenly included the “Causes of Loss – Broad Form” in the Policy instead of the “Causes of Loss – Basic Form.” This was an error in the preparation of the Policy forms. The Policy should have included the “Causes of Loss – Basic Form” that was requested and purchased. The Policy, as originally issued, did correctly show “Basic” coverage next to each property in the “Coverage” column in the Policy Declarations.

20.

On or about November 13, 2019, CLIC became aware of the earlier error with the issuance of the incorrect Causes of Loss form at the time of the initial transmission of the Policy to Terrebonne. Immediately upon learning of this error, CLIC issued a corrective endorsement on November 13, 2019, to be effective as of the original Policy inception date of November 23, 2018, which stated the following: “Reason for change to Coverage(s) Part – Amend schedule of forms to delete form CP1020 10 12-Causes of Loss-Broad Form and replace with form CP1010 10 12-Basic Form (copy attached) as forms were issued incorrectly at issuance.” This endorsement was provided to Terrebonne on or about November 13, 2019 along with a copy of the Causes of Loss – Basic Form (CP 10 10 10 12).

21.

After the Policy was originally issued, TB & JB, LLC subsequently purchased five (5) apartment buildings located at 271 Grandwood Drive, Patterson, LA, including the specific building at issue for this claim.

22.

On or about January 11, 2019, a Policy Change Request was submitted by Terrebonne to CLIC requesting that “Building” coverage for five (5) newly acquired apartment buildings located at 271 Grandwood Drive, Patterson, LA, including the subject Property where the loss at issue occurred, be added to the Policy. The Policy Change Request sought “Basic” Form coverage for the subject Property, showing an entry stating “Coverage Basic Form” for each of the five (5) buildings located at 271 Grandwood Drive, Patterson, LA.

23.

CLIC processed the Policy Change Request on January 21, 2019, and the subject Property located at 271 Grandwood Drive was added to the Policy, effective January 15, 2019. A Policy endorsement was issued and transmitted to Terrebonne on January 22, 2019 to reflect this change to the Policy. The endorsement amended the Policy to add premises 11-15 (the 5 separate buildings located at 271 Grandwood Drive) and stated that “Coverage is Basic Form.”

24.

The building where the November 8, 2019 property damage Incident occurred was premises 11 on the Policy – 271 Grandwood Drive, Building 1. The Policy provided “Building” coverage for this Property, with a Limit of \$200,000, Basic Form Coverage, Replacement Cost Value, subject to a 90% co-insurance requirement, with a 2% (minimum \$2,500) deductible for Wind and Hail and a \$2,500 deductible for all other perils. These terms are stated in the Policy endorsement which added the subject Property to the Policy, effective January 15, 2019.

25.

The “Causes of Loss – Basic Form” of the Policy contains the following “Covered Causes of Loss”:

**CAUSES OF LOSS – BASIC FORM
(CP 10 10 10 12)**

A. Covered Causes of Loss

When Basic is shown in the Declarations, Covered Causes of Loss means the following:

1. Fire

2. **Lightning**
3. **Explosion...**
4. **Windstorm or Hail...**
5. **Smoke...**
6. **Aircraft or Vehicles...**
7. **Riot or Civil Commotion...**
8. **Vandalism...**
9. **Sprinkler Leakage...**
10. **Sinkhole Collapse...**
11. **Volcanic Action...**

26.

The “Causes of Loss – Basic Form” of the Policy contains the following Exclusions:

CAUSES OF LOSS – BASIC FORM
(CP 10 10 10 12)

B. Exclusions

1. **We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.**

2. **We will not pay for loss or damage caused by or resulting from:**

- b. **Rupture or bursting of water pipes (other than Automatic Sprinkler Systems) unless caused by a Covered Cause of Loss.**
- c. **Leakage or discharge of water or steam from any part of a system or appliance containing water or steam (other than an Automatic Sprinkler System), unless the leakage or discharge occurs because the system or appliance was damaged by a Covered Cause of Loss. But we will not pay for loss or damage caused by or resulting from continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.**
- d. **Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control.**

But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion.

- e. **Mechanical breakdown, including rupture or bursting caused by centrifugal force.**

But if mechanical breakdown results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

27.

In addition to the foregoing provisions, Great Lakes pleads all other conditions, terms, provisions, warranties, limitations, definitions and exclusions of the Policy which may also be found to be applicable as Great Lakes' investigation of this matter continues. Great Lakes reserves the right to amend its Complaint for Declaratory Judgment as additional and/or more specific information becomes available.

REQUEST FOR DECLARATORY RELIEF

28.

An actual, present, and existing controversy has arisen between Great Lakes and its insured, TB & JB, LLC, with respect to the scope of coverage provided by the subject Policy and whether the Policy should provide coverage for the water damage Incident that occurred on November 8, 2019.

29.

Pursuant to the Declaratory Judgment Act, Great Lakes seeks a judicial declaration of its rights and obligations under the Policy with respect to the November 8, 2019 Incident. The Court's declaration will confer certainty on the parties with respect to their rights and obligations under the Policy and proper disposition of the insurance claim made under Policy arising out of the November 8, 2019 water damage Incident.

30.

Great Lakes seeks a declaration that the Policy document issued to TB & JB, LLC on January 7, 2019, which mistakenly included the "Causes of Loss – Broad Form" in the Policy, did not reflect the expressed mutual intent of the parties to the insurance contract and was merely an error in the preparation of the Policy forms.

31.

Great Lakes seeks a declaration that, despite the error in the initial issuance of the Policy containing the incorrect "Causes of Loss" form, any coverage provided by the Policy is subject to

the “Causes of Loss – Basic Form” as this coverage was requested and purchased by TB & JB, LLC.

32.

Great Lakes seeks a declaration that the Policy document issued to TB & JB, LLC on January 7, 2019, which mistakenly included the “Causes of Loss – Broad Form” in the Policy, be reformed to include the “Causes of Loss – Basic Form” as the applicable Causes of Loss form under the Policy to correctly reflect the coverage requested and purchased by TB & JB, LLC, which is correctly shown as “Basic” coverage next to each property in the “Coverage” column in the Policy Declarations.

33.

Great Lakes seeks a declaration that the Policy does not provide coverage for the November 8, 2019 water damage Incident because the damage was not caused by a “covered cause of loss” as defined in the Policy under the “Causes of Loss – Basic Form.”

34.

Great Lakes seeks a declaration that the property damage caused by the November 8, 2019 water damage Incident was caused by rupture or bursting of water pipes and is, therefore, excluded from coverage under the Policy.

35.

Great Lakes seeks a declaration that the property damage caused by the November 8, 2019 water damage Incident was caused by leakage or discharge of water from a system or appliance containing water, and the system/appliance was not damaged by a Covered Cause of Loss, therefore, the damage is excluded from coverage under the Policy.

WHEREFORE, Great Lakes respectfully requests that this Honorable Court enter a judgment declaring the rights, status and obligations of the parties under the Policy, including, but not limited to, the following:

- (1) That the Policy document issued to TB & JB, LLC on January 7, 2019, which mistakenly included the “Causes of Loss – Broad Form” in the Policy, did not reflect the expressed mutual intent of the parties to the insurance contract and was merely an error in the preparation of the Policy forms;
- (2) That, despite the error in the initial issuance of the Policy containing the incorrect “Causes of Loss” form, any coverage provided by the Policy is subject to the “Causes of Loss – Basic Form” as this coverage was requested and purchased by TB & JB, LLC;
- (3) That the Policy be declared and/or reformed to include the “Causes of Loss – Basic Form” as the applicable Causes of Loss form under the Policy in effect at the time of the November 8, 2019 water damage Incident;
- (4) That the Policy does not provide coverage for the November 8, 2019 water damage Incident because the damage was not caused by a “covered cause of loss” as defined in the Policy under the “Causes of Loss – Basic Form”;
- (5) That the property damage caused by the November 8, 2019 water damage Incident was caused by rupture or bursting of water pipes and is, therefore, excluded from coverage under the Policy;
- (6) That the property damage caused by the November 8, 2019 water damage Incident was caused by leakage or discharge of water from a system or appliance containing water, and the system/appliance was not damaged by a Covered Cause of Loss, therefore, the damage is excluded from coverage under the Policy; and

(7) For all such other and further relief as equity and justice may provide.

Respectfully submitted,

/s/ Brent J. Carbo

R. Todd Musgrave, Bar No.22840
Brent J. Carbo, Bar No. 30429
Musgrave, McLachlan, & Penn, L.L.C.
1515 Poydras St., Suite 2380
New Orleans, LA 70112
Telephone: (504) 799-4300
Facsimile: (504) 799-4301
Email: rtm@mmpfirm.com
bjc@mmpfirm.com

Attorneys for Great Lakes Insurance SE

PLEASE SERVE:

TB & JB, LLC

Through its registered agent for service of process:

Joseph M. Billiot
411 Teche Road
Morgan City, LA 70380